General Assembly

Governor's Bill No. 841

January Session, 2013

LCO No. **2997**

Referred to Committee on FINANCE, REVENUE AND BONDING

Introduced by:
SEN. WILLIAMS, 29th Dist.
SEN. LOONEY, 11th Dist.
REP. SHARKEY, 88th Dist.
REP. ARESIMOWICZ, 30th Dist.

AN ACT IMPROVING THE FISCAL DISCIPLINE OF THE STATE BY ELIMINATING THE ACCUMULATED GAAP DEFICIT AND RESTRUCTURING ECONOMIC RECOVERY NOTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) (a) The Treasurer is authorized to issue bonds, notes or other obligations of the state from time to time in one or more series in an aggregate principal amount sufficient to generate net proceeds of not more than seven hundred fifty million dollars, and to apply the net proceeds of such issuance to the reduction of the accumulated deficit of the state in the General Fund reported in the audited financial statements of the state for the fiscal year ending June 30, 2013, as determined using generally accepted accounting principles prescribed by the Governmental Accounting Standards Board. The Treasurer is authorized to issue bonds, notes or other obligations in an amount sufficient to refund such bonds, notes or other obligations previously issued pursuant to this section. In addition to the bonds, notes or other obligations authorized by this section to eliminate a portion of such deficit, the Treasurer is authorized to issue bonds, notes or other obligations in such additional amounts as the Treasurer shall determine to pay the costs of issuance of such bonds, notes or other obligations issued pursuant to this section, and up to two years of interest payable or accrued on such bonds, notes or other obligations.

(b) All such bonds, notes or other obligations shall be general obligations of the state and the full faith and credit of the state of Connecticut are pledged for the payment of the principal of and interest on such bonds, notes or other obligations as the same shall become due, and accordingly and as part of the contract of the state with the holders of such bonds, notes or other obligations, appropriation of all amounts necessary for punctual payment of such principal and interest is hereby made, and the Treasurer shall pay such principal and interest as the same become due. All such bonds, notes or other obligations shall be sold at not less than par and accrued interest in such manner and on such terms as the Treasurer may determine is in the best interest of the state, and shall be signed in the name of the state and on its behalf by the Treasurer. All such bonds, notes or other obligations shall mature at such time or times not later than June 30, 2028, in such principal amounts and at such times, bear such date or dates, be payable at such place or places, bear interest at such rate or different or varying rates, payable at such time or times, be in such denominations, be in such form with or without interest coupons attached, carry such registration and transfer privileges, be payable in such medium of payment, be subject to such terms of redemption with or without premium and have such additional security, covenant or contract provisions, as appropriate or necessary to improve their marketability, as the Treasurer shall determine prior to their issuance. In connection with such bonds, notes or other obligations, the Treasurer may enter into such paying agent agreements, indentures of trust, escrow agreements or other agreements, with such parties and with such provisions as the Treasurer determines are appropriate or necessary.

(c) The Treasurer may obtain from a commercial bank or insurance company authorized to do business within or without this state a letter of credit, line of credit or other liquidity facility or credit facility for the purpose of providing funds for the payments in respect of bonds, notes or other obligations required by the holder thereof to be redeemed or repurchased prior to maturity or for providing additional security for such bonds, notes or other obligations. In connection with any such liquidity facility or credit facility, the Treasurer may enter into any reimbursement agreements, remarketing agreements, standby purchase agreements or any other necessary or appropriate agreements on behalf of the state in connection with securing or insuring or remarketing such bonds, notes or other obligations, on such terms and conditions as the Treasurer determines to be in the best interest of the state. The Treasurer is authorized to pledge the full faith and credit of the state to the state's payment obligations under any such agreement and the Treasurer is authorized to include such pledge in any such agreement as part of the contract with the provider of such liquidity facility or credit facility. The Treasurer shall apply any appropriation for the payment of such bonds, notes or other obligations to such reimbursement repayment if such liquidity facility or credit facility is drawn upon. As part of the contract of the state with the other parties to any agreement entered into pursuant to this subsection for which the full faith and credit of the state is pledged to the state's payment obligations under such agreement, appropriation of all amounts necessary for the punctual payment of the obligations of the state under any such agreement is hereby made and the Treasurer shall pay such amounts as the same become due.

(d) In connection with or incidental to the carrying of such bonds, notes or other obligations, or in connection with or incidental to the sale and issuance of such bonds, notes or other obligations, the

Treasurer may enter into such contracts as the Treasurer may determine to be necessary or appropriate to place the obligation of the state, as represented by the bonds, notes or other obligations, in whole or in part, on such interest rate or cash flow basis as the Treasurer may determine, including without limitation, interest rate swap agreements, insurance agreements, forward payment conversion agreements, futures contracts, contracts providing for payments based on levels of, or changes in, interest rates or market indices, contracts to manage interest rate risk, including without limitation, interest rate floors or caps, options, puts, calls and similar arrangements. Such contracts shall contain such payment, security, default, remedy and other terms and conditions as the Treasurer may deem appropriate and shall be entered into with such party or parties as the Treasurer may select, after giving due consideration, where applicable, for the creditworthiness of the counter party or counter parties, including any rating by a nationally recognized rating agency, the impact on any rating on outstanding bonds, notes or other obligations or any other criteria as the Treasurer may deem appropriate, provided the unsecured long-term obligations of the counter party is rated the same or higher than the underlying rating of the state on the applicable bonds, notes or other obligations by at least one nationally recognized rating agency. The Treasurer is authorized to pledge the full faith and credit of the state to the state's payment obligations under any contract entered into pursuant to this subsection. As part of the contract of the state with the other parties to any agreement entered into pursuant to this subsection for which the full faith and credit of the state is pledged to the state's payment obligations under such agreement, appropriation of all amounts necessary for the punctual payment of the obligations of the state under any such agreement is hereby made and the Treasurer shall pay such amounts as the same become due.

(e) The Superior Court shall have jurisdiction to enter judgment against the state founded (1) upon any express contract between the state and the purchasers and subsequent owners and transferees of any bonds, notes or other obligations issued or contracted to be issued by the state pursuant to this section, and (2) upon any agreement entered into pursuant to subsection (c) or (d) of this section. Any action brought under this subsection shall be brought in the superior court for the judicial district of Hartford. The jurisdiction conferred upon the Superior Court by this subsection includes any set-off, claim or demand whatever on the part of the state against any plaintiff commencing an action under this subsection. Such action shall be tried to the court without a jury. All legal defenses, except governmental immunity, shall be reserved to the state. Any action brought under this subsection shall be privileged in respect to assignment for trial upon motion of either party.

(f) Any expense incurred in connection with the issuance or renewal of the bonds, notes or other obligations issued pursuant to this section shall be paid from the accrued interest and premiums on such bonds, notes or other obligations, from the proceeds of the sale of such bonds, notes or other obligations or otherwise from the General Fund. The Treasurer is authorized to issue such bonds, notes or other obligations in such form and manner that the interest on such bonds, notes or other obligations may be includable or excludable under the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, in the gross income of the holders or owners of such bonds, notes or other obligations. The Treasurer may make representations and agreements for the benefit of the holders of any such bonds, notes or other obligations which are necessary or appropriate to ensure the inclusion or exclusion of interest on such bonds, notes or other obligations of the state from taxation under the Internal Revenue Code of 1986 or any subsequent corresponding internal revenue code of the United States, as from time to time amended, including agreements to pay rebates to the federal government of investment earnings derived from the investment of the proceeds of bonds, notes or other obligations. The Treasurer may make representations and agreements for the benefit of the holders of such bonds, notes or other obligations on behalf of the state to provide secondary market disclosure information. Any such agreement may include: (1) Covenants to provide secondary market disclosure information, (2) arrangements for such information to be provided with the assistance of a paying agent, trustee or other agent, and (3) remedies for breach of such agreement, which remedies may be limited to specific performance. The state shall protect and save harmless any official or former official of the state from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence on the part of such official, while acting in the discharge of his or her official duties, in providing secondary market disclosure information or performing any other duties set forth in any agreement to provide secondary market disclosure information. Nothing in this section shall be construed to preclude the defense of governmental immunity to any such claim, demand or suit. For purposes of this subsection "official" means any person elected or appointed to office or any state employee. This indemnity provision shall not apply to cases of wilful and wanton fraud.

(g) All such bonds, notes or other obligations, their transfer and the income therefrom, including any profit on the sale or transfer thereof, shall at all times be exempt from all taxation by the state or under its authority, except for estate or succession taxes, but the interest on such bonds, notes or other obligations shall be included in the computation of any excise or franchise tax. Such bonds, notes or other obligations are hereby made and declared to be (1) legal investments for savings banks and trustees unless otherwise provided in the instrument creating the trust, (2) securities in which all public officers and bodies, all insurance companies and associations and persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and persons carrying on a banking or investment business, all administrators, guardians, executors, trustees and other fiduciaries and all persons whatsoever who are or may be authorized to invest in bonds, notes or other obligations of the state, may properly and legally invest funds, including capital in their control or belonging to them, and (3) securities which may be deposited with and shall be received by all public officers and bodies for any purpose for which the deposit of bonds, notes or other obligations of the state is or may be authorized.

Sec. 2. (NEW) (*Effective from passage*) (a) From the fiscal year ending June 30, 2014, to the fiscal year ending June 30, 2028, inclusive, there shall be deemed appropriated from the General Fund of the state in each fiscal year an amount, to be distributed over said fiscal years, equal to the difference between the accumulated deficit of the state in the General Fund, as determined using generally accepted accounting principles prescribed by the Governmental Accounting Standards Board as of June 30, 2013, as estimated by the Secretary of the Office of Policy and Management, and the amount authorized in section 1 of this act. Such appropriation shall be deemed appropriated in each fiscal year that any bonds, notes or other obligations issued pursuant to section 1 of this act are outstanding for the purpose of eliminating the accumulated General Fund deficit determined in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board. If the annual financial report for any fiscal year, delivered by the Comptroller to the Governor in accordance with section 3-115 of the general statutes, and presented in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board, states that there is no accumulated deficit of the General Fund for such fiscal year, then no amounts shall be deemed appropriated pursuant to this section in each of the fiscal years succeeding the year for which such financial statements were delivered. The state of Connecticut does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued pursuant to section 1 of this act, that no public or special act of the General Assembly shall diminish any appropriation hereunder until such bonds, notes or other obligations, together with the interest thereon, are fully met and discharged, provided nothing herein contained shall preclude such diminishment if and when adequate provision shall be made by law for the protection of the holders of such bonds, or if and when the Governor declares an emergency or the existence of extraordinary circumstances, in which the provisions of section 4-85 of the general statutes are invoked, and at least three-fifths of the members of each chamber of the General Assembly vote to diminish such required appropriation during the fiscal year for which the emergency or existence of extraordinary circumstances are determined, or in such other circumstances as may be permitted by the terms of the bonds, notes or other obligations issued pursuant to section 1 of this act.

(b) The State of Connecticut does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued pursuant to section 1 of this act, that the state shall not treat the proceeds of any such bonds, notes or other obligations as constituting revenue of the General Fund, nor shall such proceeds be available for any current or future budget appropriation.

(c) The State Treasurer is authorized to include these pledges and undertakings for the state in such bonds, notes or other obligations.

Sec. 3. Subsection (a) of section 3-20g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) For the purpose of funding the deficit in the General Fund arising from the operations of the General Fund for the fiscal year ending June 30, 2009, as reported by the Comptroller to the Governor in accordance with section 3-115, the Treasurer is authorized to issue notes of the state from time to time in an amount not to exceed the amount of such deficit, and to deposit the proceeds thereof in the General Fund. The Comptroller is hereby authorized and directed to certify to the Treasurer the estimated amount of such deficit and the amount so certified shall be conclusive evidence for the purpose of determining at the time of issuance the amount of notes which the Treasurer is authorized to issue pursuant to this section to fund the deficit. The Comptroller shall make such certification promptly upon passage of this section, and may base such certification on the most recent of the Comptroller's monthly reports on the fiscal condition of the state. When the actual amount of the accumulated deficit in the General Fund as of June 30, 2009, is known, the Comptroller is hereby authorized and directed to certify to the Treasurer such amount. In the event that the actual amount of the General Fund deficit is more than the amount initially estimated by the Comptroller, the Treasurer is authorized to issue additional notes of the state therefor and to deposit the proceeds thereof in the General Fund. The Treasurer is authorized to issue notes in an amount sufficient to refund any notes previously issued pursuant to this section. <u>Notwithstanding the provisions of subparagraph (B) of subsection (i) of section 3-20, no such refunding shall require a certification of the Treasurer that the state reasonably expects as of the date of the certification to achieve, as a result of the sale of such refunding notes and the investment and application of the proceeds of such sale, net debt service savings.</u> In addition to the notes authorized by this section to fund the deficit, including any refunding notes, the Treasurer is authorized to issue notes in such additional amounts as the Treasurer shall determine to pay the costs of issuance of any notes issued pursuant to this section and interest payable or accrued on such notes through June 30, 2011.

Sec. 4. Subsection (c) of section 3-20g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) All such notes shall be general obligations of the state and the full faith and credit of the state of Connecticut are pledged for the payment of the principal of and interest on such notes as the same shall become due, and accordingly and as part of the contract of the state with the holders of such notes, appropriation of all amounts necessary for punctual payment of such principal and interest is hereby made, and the Treasurer shall pay such principal and interest as the same become due. All such notes shall be sold at not less than par and accrued interest in such manner and on such terms as the Treasurer may determine is in the best interest of the state, and shall be signed in the name of the state and on its behalf by the Treasurer. All such notes shall mature before July 1, **[**2016**]** 2018, in such principal amounts and at such times, bear such date or dates, be payable at such place or places, bear interest at such rate or different or varying rates, payable at such time or times, be in such denominations, be in such form with or without interest coupons attached, carry such registration and transfer privileges, be payable in such medium of payment, be subject to such terms of redemption with or without premium and have such additional security, covenant or contract provisions, as appropriate or necessary to improve their marketability, as the Treasurer shall determine prior to their issuance. In connection with such notes, the Treasurer may enter into such paying agent agreements, indentures of trust, escrow agreements or other agreements, with such parties and with such provisions as the Treasurer determines are appropriate or necessary.

Sec. 5. Sections 4-30b and 4-30c of the general statutes are repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	New section
Sec. 2	*from passage*	New section
Sec. 3	*from passage*	3-20g(a)
Sec. 4	*from passage*	3-20g(c)
Sec. 5	*from passage*	Repealer section

Statement of Purpose:

To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]